



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. Jennifer Piskun
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR95-796

Dear Ms. Piskun:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32914.

The Humble Independent School District (the "district") received a request for "[t]he Time Travelers script of the presentation on 24 March 1995 by the Odyssey of the Mind Team under the direction of Ms. Karen Powell." You claim that the requested information is not subject to the Open Records Act. You also claim that if the information is subject to the act, it is excepted from disclosure under section 552.114. We have considered the exception you claimed and have reviewed the document at issue.

As a threshold issue, we address your contention that the requested information is not "public information" subject to the Open Records Act. Gov't Code § 552.021. You contend that the requested information is not subject to the act because "other than sponsorship and supervision [provided to the students who wrote the requested script], the [d]istrict did not maintain, assemble, or collect this information." Section 552.021 of the Government Code provides in pertinent part:

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Thus, the Open Records Act will apply to the script if it constitutes information "collected, assembled, or maintained" by or for the district within the above provision.

In your letter, you state that the Odyssey of the Mind contest is an extracurricular scholastic competition that encourages creativity, spontaneity, and thought. The project for which the students wrote the requested script is sent directly to the schools. Although you state that no one other than the students can "direct, guide, write, prepare, or assist" in the development and performance of the project theme, the script was written on-campus, under the supervision of a school teacher/coach, and for a school-sponsored activity. It was also performed at school on school time. Based on these facts, we conclude that the script was "collected, assembled, or maintained" for the district. The coach of the two Odyssey of the Mind teams has a copy of the script on her computer and the district provided a copy of the script to this office. Consequently, the district has a right of access to the script. Therefore, the script contains public information and is subject to the Open Records Act.

You claim that, if the script is subject to the act, section 552.114 excepts it from required public disclosure. Section 552.114(a) provides:

Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or in part by state revenue.

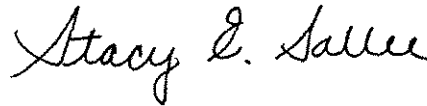
In addition, section 552.026 of the act incorporates the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the act. FERPA prohibits an educational institution that receives federal revenue from releasing "education records" without written consent. 20 U.S.C. § 1232g(b)(1). "Education records" are defined as records that contain information directly related to a student and that are maintained by an educational institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision No. 332 (1982), 206 (1978). This office generally applies the same analysis under section 552.114. Open Records Decision No. 539 (1990).

We conclude that the script is an "education record" under FERPA. It was authored by students and therefore relates to those students. The school has copies of the script and therefore "maintains" the document. We must now determine whether release of this education record, in whole or in part, would tend to identify the students involved in the Odyssey of the Mind contest. The requestor states that his son and other students viewed a performance of the play and that these students, and presumably the requestor, know the identities of the students involved. You state that only fourteen students are involved in the entire project and claim that "the small size of the program makes

the students readily identifiable.” We have previously held that information that does not identify individual students by name may be withheld where there is a relatively small number of students to which the information could be applicable. Open Records Decision No. 294 (1981) at 2 (“In a small sampling, identification of individuals may be a relatively simple task.”). We conclude that release of the requested information would tend to identify the students involved. Therefore, the district must withhold the entire document.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/LRD/rho

Ref.: ID# 32914

Enclosures: Submitted documents

¹We note that if the requestor obtains written consents from the parents of the students involved in the program, the district may not withhold the requested information. 20 U.S.C. § 1232g(b)(2)(A). We address your copyright concerns in the event that the requestor obtains the necessary consents. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).